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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,064	09/13/2005	Morris Zelkha	ZELKHA6	5871
1444 7590 09/15/2008 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
PRATT, HELEN F				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
09/15/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,064

Applicant(s)

ZELKHA ET AL.

Examiner

Helen F. Pratt

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 5-17 is/are rejected.
- 7) ☒ Claim(s) 1-4 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 6, 7 and 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite in the use as in step C OF THE PHRASE "which is further concentrated to obtain tomato concentrate. It is not known what is to be further concentrated.

Claims 6 and 9 are indefinite in that it is not known to what degree the viscosity and lycopene tomato concentrate is concentrated in order to know the metes and bounds of the claim.

In claim 7, no antecedent basis is seen for the phrase "before concentrating".

Miscellaneous

In claims 6 and 9, "concentrate" should probably be "concentration".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strashun (2,959,486).

Strashun et al. disclose a process as in claims 5 and 8 of separating at least a part of the pulp from the tomato juice to produce a juice containing less than 6% pulp, concentrating the juice and dehydrating (col. 11, lines 18-25). Claim 5 differs from the reference in that it is for a method of controlling the viscosity and lycopene concentration of tomato products. However, the method has been shown above, and the further steps as disclosed by Strashun et al. have not been excluded from the claims. Since the process has been shown the viscosity and lycopene concentration would have been controlled. Therefore, it would have been obvious to control the viscosity and lycopene concentration of as shown by Strashun et al.

Claim 6 further requires that the viscosity and lycopene concentration be controlled in a tomato concentrate. The viscosity and lycopene would have been controlled since the process has been shown by Strashun et al. Also, no step is seen to add anything to the tomato concentrate in order to control the viscosity and lycopene.

The pulp as in claim 7 is separated by concentrating the tomato juice as above.

As the method has been shown as in claim 9, the viscosity and lycopene concentration of the juice is controlled.

Strashun discloses a pulp which has been dried as in claims 10 and 11, and breaks into small flakes (col. 10, lines 9-15). The flakes can easily be 2.5 mm since they are fragile or even 1.5 mm as in claim 13.

The water absorbency would have been within the claimed amount since the composition has been shown as in claim 12.

As the pulp is added to the dried serum as in claims 14 and 15, this is seen to be a method of coloring using the composition of claims 10 and 11 (col. 10, lines 9-35).

As tomato oleoresin could be made or lycopene could be extracted from the tomato paste, the improvement is seen to have been shown.

Therefore, it would have been obvious to make the composition and process as shown by Strashun.

Claims 10 -17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Succar et al. (WO 03/024243).

Succar et al. disclose a pulp composition as in claim 10 and 11, which must have a higher lycopene concentration since the liquid has been removed from the pulp. The fact that the pulp is in cake form means that the size of the pulp particles are small since they have been compressed as in claims 10 and 13. The office does not have the facilities to determine just the size of the particles or the amount of lycopene.

Therefore, it would have been obvious to make a composition as shown by Succar et al.

The water absorbency would have been within the claimed range since the product is dry and will natural absorb water due to its fiber content and dryness of the product as in claim 13.

The composition is seen to able to color a material since lycopene is a known colorant as in claim 14 and 15 and could be used as a starting material for tomato oleoresin or lycopene as in claims 16 and 17, since this is where the color is in

tomatoes and it would have been obvious to start with the pulp which contains lycopene and carotene.

Allowable Subject Matter

Claim1-4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/
Primary Examiner, Art Unit 1794

9-11-08